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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,171	11/21/2003	Donald J. Propp	20002.128	2350
<div>7590 12/28/2007</div> <div>Christopher J. Fildes Fildes &amp; Outland, P.C. Suite 2 20916 Mack Avenue Grosse Pointe Woods, MI 48236</div> <div>EXAMINER NGUYEN, VI X</div> <div>ART UNIT 3734 PAPER NUMBER</div> <div>MAIL DATE 12/28/2007 DELIVERY MODE PAPER</div>				

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/719,171

Applicant(s)

PROPP ET AL.

Examiner

Victor X. Nguyen

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 14-18 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13 is/are allowed.
- 6) ☒ Claim(s) 1 and 6-12 is/are rejected.
- 7) ☒ Claim(s) 2-5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. This is a response to the amendment dated 9/12/2007. Claims 1-18 are pending. Claims 14-18 were previously withdrawn from further consideration so that claims 1-13 are currently pending. The terminal disclaimer is also acknowledged. However, upon further consideration, new rejections are made below.

#### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 6-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Hildebrand (3,763,726). Hildebrand discloses in figures. 1-5, and abstract, a surgical instrument having the limitations as recited in the above listed claims, including: a first elongate member (1) has a handle end portion, a working tip portion and a box hinge portion occurs at 4, where a second elongated member (2) has a handle end portion, a working tip portion and a box hinge portion at 4, where the first box hinge portion (see col. 3, lines 47-49) defines by a slot (7) having generally flat parallel sides, where the slot has a pivot point at 31 and where the second box hinge portion (see col. 3, lines 51-55) is capable of having a cross sectional shape conforming with the flat, parallel sides of the slot and being continuous in width with the handle and tip portions on either side of the box hinge portion, and where the second box hinge portion has a pivot point at 111, where the pivot points of the first box hinge portion mates with the pivot

points of the second box hinge portion see figs, 6-7, and where the handle end portion includes a circular handle and a locking mechanism (occurs at the inferior of element 6, fig.1) which interconnects at the far end of the handle end portion, and where the length of the handle end portion is generally longer than the length of the working tip portion (at best seen fig. 1, section 6 is definitely longer than section 5).

***Allowable Subject Matter***

3. Claim 13 allowed over the art of record.

Claims 2-3 and 4-5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Victor X Nguyen  
Examiner  
Art Unit 3734



VN *VN*  
12/12/2007



MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER